

Viewing the Labor Law Reform in China From a Perspective of Legal Globalization

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Abstract

After the cold war, the trends of legal globalization became more and more obvious. People's Republic of China (PRC) began its connection with the international community and the global market, and its legal reform after the launch of the "reform and opening-up" policy. By examining China's labor law reform, we can see how legal globalization has influenced China's legal system. China introduced and transplanted many institutions, terms of ILO conventions during its labor law reform. It also accepted many principles and conceptions of ILO conventions in its labor law and constitutional law, which would shape China's labor law reform. Multinational corporations (MNC) and transnational civil society organizations (TCSO) influenced Chinese labor law reform through lobbying, advocacy, public education, and litigations. Informal norms such as Corporate Social Responsibility standards developed by MNCs and TSCOs also inspired Chinese legislators to improve China's labor law and Chinese SCOs or business associations to develop labor standards to fill the gaps in China's labor law and regulations. In conclusion, in the age of legal globalization, the labor law reform in China is a kind of legal transplantation. International norms, actions by multinational corporations and transnational civil society, and their informal norms together constitute the force which promotes the transplantation and the reform of China's legal system.

Key Words: legal globalization, global governance, labor law, law reform

Foreword

After the cold war, the trends of economic globalization became more and more obvious: international investments and transactions developed, international market of trade and finance expanded. As the development of economic globalization, legal globalization was also noticed by more and more scholars. First, international organizations and super-national organizations challenged the classic world system based on the sovereignties of nation-states. Transnational economic organizations such as the World Trade Organization, the World Bank, and the International Monetary Fund created various

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international norms in economic areas. The activities of TCSOs had significant impacts on legal affairs in some countries and regions. For instance, the Ford Foundation and the Open Society Institute widely participated in the rule of law programs in Asia, Latin America, and Central Europe. Hence, the concept of “global governance,” consisted by states, global market, and transnational civil society, was developed.² Second, human rights, environmental protection, international crimes, and terrorism became global issues, which needed international cooperation. Even when these issues were handled by governments as domestic affairs, there were international interventions.

People’s Republic of China (PRC) began its “reform and opening-up” policy in 1978. The “reform and opening-up” policy meant that China launched a comprehensive reform in the field of politics, economy, and law, to establish a “socialistic market economy” and a “socialistic legal system;” and resumed its exchange and cooperation with the international community, and participation in the global market. Reform and opening-up are the two sides of one coin. Because only if China establish a market economy can its market be integrated with the global market; only if China’s legal system meet the lowest international standards of human rights and the rule of law, may China attract foreign investments. International conventions and good practices of foreign countries were a reference for China to establish its modern legal system.³ The “reform and opening-up” was the beginning of China’s involvement in globalization. Hence the examination of China’s legal reform since the “reform and opening-up” and its relations with international norms would help us understand the relations between law and globalization.

There are several reasons for choosing labor law as our research subject. First, labor issue is an important international issue. UN, ILO, WTO have created various international norms on this issue. Second, labor law is related to human rights,⁴ which makes the labor law reform an important issue for international human rights organizations. Third, labor law has enormous impacts on the economy. As the second-largest economy, China’s labor

2 See The Commission on Global Governance, *Our Global Neighborhood*, available at <http://www.gdrc.org/u-gov/global-neighbourhood/> (last visited April. 30, 2017).

3 China began its modern legal reform in the late Qing dynasty. The throne fell in 1911, however, the reform continued in the era of the Republic of China. With the aids of foreign legal scholars, Chinese lawyers trained in the Western countries and in Japan drafted laws for the new regime. China adopted a civil law system influenced by the German, French, and Japanese laws. After the establishment of the People’s Republic of China in 1949, the Soviet legal system became a significant source which inspired China’s legal reform. See Percy R. Luney, Jr., *Traditions and Foreign Influence: Systems of Law in China and Japan*, *Law and Contemporary Problems*, 1989, Vol. 52, No. 2:pp. 129-150.

4 See Ye Jingyi, Wei Qian, Jingji, Shehui he Wenhua Quanli Guoji Gongyue yu Laodongquan de Baohu, *Beijing Daxue Xuebao (Zhaxue Shehui Kexue Ban)*, 2004, Vol. 41, No. 2: pp.87-95.

law reform attracts great attentions by multinational enterprises in different industries. In a word, the labor law reform shows some key aspects of legal globalization, which makes it a perfect subject for our study.

Chinese Labor Law Since the “Reform and Opening-up”

The “reform and opening-up” started a new era of China’s legal history. Since then China’s labor law has developed rapidly. China’s labor legal system consists of related constitutional articles, laws and regulations.

Constitutional Law

There are some general articles on labor issues in China’s Constitutional Law, which provide fundamental protections for labor rights. The Constitution of 1978 was the valid Constitution when China launched the “reform and opening-up” policy. The Article 45 of the 1978 Constitution recognized the liberty of assembly, association and strike.⁵ The Article 48 stated that “citizens of the People’s Republic of China have the right to work.” The Article 49 stated that “workers have the right to rest.”⁶ The Article 53 stated that “men and women shall receive equal pay for equal work.”⁷

The Constitution of 1982 was a new Constitution after the “reform and opening-up,” and also the current valid constitution. In the Constitution of 1982, the article on “liberty of strike” was deleted.⁸ Some scholars interpreted it as the deprivation of the right to strike.⁹ However, some other scholars argued that the constitution might not state all types of rights. The Constitution did not clearly recognize the right to strike, neither forbid it. Hence this amendment had no impacts on the existence of the right to strike.¹⁰ The

5 Xian Fa [the Constitution] of 1978, art. 45.

6 Id., art. 48, art. 49.

7 Id., art. 53.

8 Xian Fa [the Constitution] of 1982, art. 35.

9 See Liu Yun-ya, Zhang Li, A Discussion on Legislation of Right to Strike in China, *Journal of Nanjing Forestry University (Humanities and Social Sciences Edition)*, 2007, Vol.7, No. 1: pp33-39. Wen Qing-hong, Yang Fang, On the Lack of Constitutional Rights and Safeguarding the Peasant Workers Rights and Interests, *Journal of Yangtze University (Social Sciences)*, 2006, Vol. 29, No. 6: pp70-73. Li Xianggang, Lun Gongmin Bagongquan de Xianfa Diwei, *Qian Yan*, 2005, No.7: pp163-167.

10 See Yang Yan-fei, The Implicit Existence of Strike Right in Constitution, *Journal of Heilongjiang Administrative Cadre Institution of Politics and Law*, 2009, No. 5:pp13-15. Liu Xiao-ya, The Analysis on the Justification Providing the Right to Strike as a Constitutional Right, *Western Law Review*, 2009, No. 5: pp26-30. Long Sheng, Right to Strike in the Chinese Constitution from the Perspective of Legal Interpretation, *Journal of Hebei Normal University (Philosophy and Social Sciences Edition)*, 2011, Vol. 34, No.3: pp82-87.

problem is that there are no specific rules on the right to strike in current Chinese laws. So even people have this right, it is difficult to exercise it.

The Article 48 of 1982 Constitution was about sexual equality. Besides equal remuneration, it added a clause stating that “selects cadres from among women,”¹¹ which was a great advance. In 2004 China’s National People’s Congress (NPC) passed an amendment stating that “The state respects and protects human rights.”¹² This was a significant event in Chinese legal history. This amendment means that the labor issues which are ignored by current labor law can refer to human rights law; the international human rights law will have greater impacts on China’s legal system, including China’s labor law.

Laws and Regulations

In China’s context, laws are the norms passed by the NPC or the standing committee of NPC. In this case, since the reforming and opening-up China’s major labor laws include the Trade Union Law (1992), the Labor Law (1994), the Production Safety Law (2002), the Labor Contract Law (2007), the Employment Promotion Law (2007), the Labor Disputes Mediation and Arbitration Law (2007), the Social Insurance Law (2010), and the Law on the Prevention and Control of Occupational Diseases (2011). Among these laws, the Labor Law and the Labor Contract Law are the core of China’s labor legal system. Besides laws, there are other norms such as administrative regulations issued by the State Council and the departmental regulations issued by the ministries. There are hundreds of labor regulations in China. Between 1979 and 1994, more than 160 labor regulations were issued.¹³ These regulations played important roles in China’s labor legal system and had consisted the main norms on labor issues before the Labor Law was passed. Because labor laws in China are very general and abstract, specific regulations are highly needed. Moreover, as China’s economy has been developing rapidly, China’s labor system has to change accordingly. In this case, regulations which are more flexible would be more useful tools for China’s law system.¹⁴ Also, China has been integrating regulations into laws. For example, the Labor Law and the Labor Contract Law are the two most important achievements of this kind of integration.

11 id. art. 48.

12 Xian Fa [the Constitution] of 2004, art. 33.

13 See Kinglun Ngok, *The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition*, *International Labor and Working Class History*, 2008, Vol. 73, Issue1: pp 45-64.

14 Id.

The Impacts of ILO Standards

One goal of the enactment of the Labor Law was to make China's labor system meet international standards.¹⁵ So Labor Law and other laws on labor issues in China learned a lot from international labor standards.¹⁶ For instance, according to the provisions of the Article 36 of Labor Law, laborers shall work for no more than 8 hours a day and no more than 44 hours a week on the average. Later in 1995, the state council issued a regulation stating that laborers shall work for no more than 40 hours a week on the average. This working hour system was developed according to the ILO conventions, Hours of Work (Industry) Convention and Forty-Hour Week Convention, even though China did not ratify them.

ILO was the most professional and authoritative international organization that creates international labor standards. Since established in 1919, it has created 189 conventions, 6 protocols, 204 recommendations, which constitute the international labor standards system. There are 8 fundamental ILO conventions which are widely accepted as "core" labor standards. These conventions include (1) the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98), which address freedom of association and collective bargaining; (2) the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105), which address forced labor issue; (3) the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111), which address anti-discrimination issue; and (4) the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182), which address child labor issue.

China is a founding member state of ILO. After 1949 the Beijing government suspended its connection with ILO. In 1971, according to the resolution of the General Assembly of the United Nations, ILO recognized the status of the Beijing government as the sole legitimate representative of China. In 1983 China formally resumed its participation in ILO. Currently China has ratified 4 fundamental ILO conventions, namely the Equal Remuneration Convention (No. 100), the Discrimination (Employment and Occupation) Convention (No. 111), the Minimum Age Convention (No. 138), and the Worst Forms of Child Labour Convention (No. 182). It also has ratified 2 priority ILO conventions, and 20 technical ILO conventions, 3 of which have been denounced.

15 Id.

16 See Mary E. Gallagher, Baohua Dong, *Legislating Harmony: Labour Law Reform in Contemporary China*, available at <http://erb.umich.edu/Research/Initiatives/colloquiaPapers/GallagherRevisedPaperJan08.pdf>, (last visited April, 30, 2017).

To examine the relations between China's labor law and fundamental ILO conventions would be a way to understand the impacts of international law on China's labor law.

*Fundamental*¹⁷

Convention	Date
C100 - Equal Remuneration Convention, 1951 (No. 100)	02 Nov 1990
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	12 Jan 2006
C138 - Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 16 years</i>	28 Apr 1999
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	08 Aug 2002

Governance (Priority)

Convention	Date
C122 - Employment Policy Convention, 1964 (No. 122)	17 Dec 1997
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	02 Nov 1990

Technical

Convention	Date
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	27 Apr 1934
C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)	17 May 1934
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	02 Dec 1936
C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	27 Apr 1934
C022 - Seamen's Articles of Agreement Convention, 1926 (No. 22)	02 Dec 1936
C023 - Repatriation of Seamen Convention, 1926 (No. 23)	02 Dec 1936
C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	05 May 1930

17 ILO identifies eight conventions as "fundamental conventions", which address the fundamental labor rights and principles. It also identifies four conventions as governance or priority instruments to encourage the governments to ratify them. All the other 177 ILO conventions are considered as technical conventions.

Convention	Date
C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	24 Jun 1931
C032 - Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	30 Nov 1935
C045 - Underground Work (Women) Convention, 1935 (No. 45)	02 Dec 1936
C080 - Final Articles Revision Convention, 1946 (No. 80)	04 Aug 1947
C150 - Labour Administration Convention, 1978 (No. 150)	07 Mar 2002
C155 - Occupational Safety and Health Convention, 1981 (No. 155)	25 Jan 2007
C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	02 Feb 1988
C167 - Safety and Health in Construction Convention, 1988 (No. 167)	07 Mar 2002
C170 - Chemicals Convention, 1990 (No. 170)	11 Jan 1995
MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)	12 Nov 2015

ILO Conventions in force ratified by China

Freedom of Association and Collective Bargaining

The freedom of association is recognized by the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98). Till 30 April 2017, 154 countries ratified the No.87 Convention,¹⁸ and 164 countries ratified the No. 98 Convention.¹⁹ China did not ratify either one.

According to the No.87 Convention, “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”²⁰ Chinese Constitutional Law, Labor Law, and Trade Union Law recognize the freedom of association. The Constitution states that Chinese citizens have the freedom of association.²¹ The Labor Law and the Trade Union Law state that laborers

18 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO (last visited April 30, 2017).

19 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO (last visited April 30, 2017).

20 No.87 Convention, art. 2.

21 Xian Fa [Constitution], art. 35.

shall have the right to participate in and organize trade unions in accordance with the law.²² However, the Trade Union Law requires that the establishment of trade unions have to be approved by the superior trade unions,²³ which makes all the trade unions branches of the All-China Federation of Trade Union (ACFTU). This clause does not meet the ILO standard of “without previous authorisation.” In practice, trade union leaders are usually appointed by the companies; unions are also funded by the companies. Hence trade unions in China can rarely support the laborers.

The right of collective bargaining is recognized by the No. 98 Convention. According to this convention, “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”²⁴ Chinese labor law uses the term “collective consultation” instead of “collective bargaining.” According to Labor Law, “a collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.”²⁵ However, because the trade unions lack independence and representativeness, the effects of collective consultation can hardly equal to the effects of collective bargaining.

Forced Labor

This issue is addressed by the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105). Till 30 April 2017, 178 countries ratified the No. 29 Convention²⁶, and 175 countries ratified the No. 105 Convention.²⁷ China did not ratify either one.

In the No. 29 Convention, “forced or compulsory labor” means “all work or service which is exacted from any person under the menace of any penalty and for which the

22 Laodong Fa [Labor Law], art. 7. Gonghui Fa [Trade Union Law], art. 3.

23 Gonghui Fa [Trade Union Law], art. 13.

24 No. 98 Convention, art. 4.

25 Laodong Fa [Labor Law], art. 33.

26 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174:NO (last visited April 30, 2017).

27 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO (last visited April 30, 2017).

said person has not offered himself voluntarily.”²⁸ China’s Labor Law states that a laborer may notify at any time the employing unit of his decision to revoke the labor contract when the employing unit forces the laborer to work by resorting to violence, intimidation or illegal restriction of personal freedom.²⁹ The Labor Contract Law states that a laborer may terminate his employment contract forthwith without giving prior notice to the employing unit when the employing unit uses violence, threats or unlawful restriction of personal freedom to compel him to work.³⁰ Forced labor is also forbidden by the Criminal Law. For example, the Criminal Law states that if any employing unit forces employees to work by means of deprivation of personal freedom, persons directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and concurrently or independently be sentenced to a fine.³¹

Although forced labor is forbidden by laws above, China is criticized on this issue because of the policies of “reform through labor” (*laodong gaizao*) and “rehabilitation through labor” (*laodong jiaoyang*). According to the Regulations on Reform through Labor, prisons have the power to force prisoners to work. Though the Article 2 of the No. 29 Convention states that “the term forced or compulsory labour shall not include... (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations,”³² most prisons have established their affiliated enterprises, and force the prisoners to work for the prison enterprises and prison factories and sell their products in the market, this common practice is actually a kind of forced labor according to the No. 29 Convention.³³

In 1957 the State Council issued the Decision on Rehabilitation Through Labour, stating that the Public Security Bureaus have the power to punish criminal suspects or law breakers through forced labor without a trial or a court judgment.³⁴ Because rehabilitation through labor was not a judicial punishment, but an arbitrary administrative decision, it

28 No. 29 Convention, art.2.

29 *Laodong Fa* [Labor Law], art. 32.

30 *Laodong Hetong Fa* [Labor Contract Law], art. 38.

31 *Xing Fa* [Criminal Law], art. 244.

32 Forced Labour Convention, 1930 (No. 29), art. 2.

33 Xiao Zhu, A Comparative Study on International Labor Standards of Abolition of Forced Labor and Chinese Relevant Legislation and Practices, *Journal of China Institute of Industrial Relations*, 2010, Vol. 24, No. 1: pp. 80-84.

34 The Decision on Indoctrination through Labor, art. 2.

faced fierce criticism. Finally, the system of rehabilitation through labor was abolished by the standing committee of NPC on 28 December 2013.³⁵

Anti-discrimination

Anti-discrimination is addressed in the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111). Till 30 April 2017, 173 countries ratified the No. 100 Convention,³⁶ and 174 countries ratified the No. 111 Convention.³⁷ China ratified them in 1990 and 2006 respectively.

The No. 111 Convention defines discrimination as “Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”³⁸ China’s Labor Law states that laborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief.³⁹ At that time, Chinese Labor Law seemed only to forbid the discrimination based on ethnic community, race, sex, and religious belief. However, China just ratified the No.100 Convention then, so the Labor Law did meet the ILO standard which China promised to obey then. After China ratified the No. 111 Convention in 2006, China enacted the Employment Promotion Law in 2007, which prohibited the discrimination against women, minorities, persons with disabilities, people with contagious, and peasant-workers.⁴⁰ We can see that China has made great efforts to improve its labor standards according to the ILO standards.

Child Labor

Child labor issue is addressed by the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182). Till 30 April 2017, 169 countries ratified

35 The Decision of NPC on the Abortion of the Laws on Rehabilitation Through Labour, available at http://www.npc.gov.cn/npc/xinwen/2013-12/30/content_1821974.htm (last visited April 30, 2017)

36 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245:NO (last visited April 30, 2017).

37 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO (last visited April 30, 2017).

38 No. 111 Convention, art. 1.

39 Laodong Fa [Labor Law], art. 12.

40 Jiuye Cujin Fa [Employment Promotion Law], art. 28.

the No. 138 Convention,⁴¹ and 180 countries ratified the No. 182 Convention.⁴² China ratified them in 1994 and 2002 respectively.

The Law of the People's Republic of China on the Protection of Minors (1991) states that "no organization or individual may hire any minor under the age of sixteen, except as otherwise provided by the State." At the end of 1991, the State Council issued the Provisions on the Prohibition of Using Child Labor,⁴³ which included a series of specific and detailed regulations on child labor. On paper, China established a complete legal framework to ban child labor.

The Gap Between Chinese Law and ILO Standards

By reviewing the relations between Chinese labor laws and ILO fundamental standards, we can see that those conventions ratified by China have greater impacts on China's labor law. The differences between China's domestic laws and its ratified conventions are small. Especially in the field of anti-discrimination, there are some obvious impacts of the No. 100 Convention and No. 111 Convention on China's plan of legislation. Though there are still gaps between China's labor law and ILO standards in the fields of freedom of association, the right to collective bargaining, and forced labor, related concepts and principles in the ILO conventions are recognized by and reflected in China's labor law. The major gaps between China's labor law and ILO conventions exist in some specific systems or standards, while they share most principles and values. Indeed, these laws and principles are general, abstract and sometimes impractical,⁴⁴ but they are not useless. For the contemporary China in transition, every new principle or concept is important. Because there have been serious debates on legal thoughts and principles, when China's labor law uses the concepts and principles of ILO conventions, it shows that China accepts and recognizes these international principles, which will definitely shape its legal reform in the future.

41 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO (last visited April 30, 2017).

42 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited April 30, 2017).

43 Jinzhi Shiyong Tonggong Guiding [Provisions on the Prohibition of Using Child Labor], available at http://www.law-lib.com/law/law_view.asp?id=7559 (last visited April 30, 2017).

44 For example, Aaron Halegua argues that the problem of Chinese labor standards is not that they are low, but they are not fully enforced. See Aaron Halegua, *The Debate Over Raising Chinese Labor Standards Goes International*, *Harvard Law & Policy Review* (Online) (April 5, 2007).

The Influence of Non-state Actors

The Participation of Global Market and Transnational Civil Society

The reform of China's labor legal system has been highly concerned by the international community. For example, the legislative process of Labor Contract Law was widely participated by multi-national corporations and civil society organizations.

The enactment of the Labor Contract Law was a significant reform of China's labor legal system, so not only China considered it seriously, but also the stakeholders kept a watchful eye on it. In March 2006 the General Office of the Standing Committee of NPC issued a notification to solicit opinions on the draft of the Labor Contract Law. More than 190,000 opinions were submitted within the next 30 days, 65% of which came from the ordinary workers and grassroots organizations. Because most workers were organized or trained by NGOs to submit their opinions, and most NGOs in China were supported financially or technically by transnational civil society organizations, so these opinions could be regarded as the results of collaboration with local Chinese NGOs and transnational civil society. Generally, transnational civil society organizations were supporting this draft Labor Contract Law, which would provide better protections for workers.

At the same time, American Chamber of Commerce in Shanghai, the US-China Business Council, The European Union Chamber of Commerce in China and many other multinational corporations and business organizations submitted their comments. These three organizations represented a large number of companies' opinions. For example, the American Chamber of Commerce in Shanghai represents over 1,300 corporations, The U.S.-China Business Council represents 250 U.S. companies, and the European Union Chamber of Commerce in China represents more than 860 companies. Unlike the civil society organizations, they submitted comments to block the draft Labor Contract Law, which would raise labor protection standards in China. There were many reasons for their opposition. First, they argued that Chinese companies usually violated labor law without serious legal consequence, because Chinese authorities rarely enforced labor law. However, companies in U.S. or Europe could not ignore labor law as Chinese companies did, because they faced pressures from domestic and international labor or human rights NGOs.⁴⁵ Second, many terms of the draft Labor Contract Law "were too vague to understand or implement,"⁴⁶ which actually was a common problem of Chinese

45 Id.

46 Id.

laws. Third, they believed that China already had established high labor standards. The key problem in China's labor system was not the low labor standards, but the weak enforcement of these standards. They argued that if China raised its labor standards before it solved the problem of the enforcement, it might make the situation worse.⁴⁷ These business organizations also threatened that foreign corporations would withdraw from China if the Labor Contract Law was passed.⁴⁸

The revised draft of Labor Contract Law accepted some suggestions by the multi-national corporate organizations, especially their criticisms on the vagueness of some terms.⁴⁹ However, it still raised the labor standards in general, which reflected the NGOs' opinions. It is not safe to say that the lobbying of transnational civil society was the only factor that made this reform successful. Actually, the goal of the legislation of the Labor Contract Law was to improve the conditions of workers, and to reduce their discontents. This was the social context which made the opinions of transnational labor organizations and human rights organizations were accepted by Chinese legislator. Yet we shall not underestimate the effects of the transnational civil society. Their opinions were an important resource for China to launch this reform. Before the opinion submission, they had already made great efforts to advocate for labor law reform. Many human rights organizations even tried to boycott China in the international market to push China to improve its labor standards.⁵⁰ Below we will take Labour Action China (LAC) as an example to show how transnational civil society organizations can influence China's labor law.

LAC is a Hong Kong-based labor NGO, whose mission is to improve China's labor conditions. In the 1990s and early 2000s, LAC found that many workers of Hong Kong jewelry companies in Guangdong province suffered from silicosis, and were fired because of the disease. Back then China did not enact any law on occupational disease. There was no regulation about what occupational disease was, how to diagnose occupational disease, and how to compensate the victims of occupational disease.⁵¹ To help the victims and address this problem, LAC supported the victims to fight for their rights through

47 See Gallagher and Dong, *supra* note 15.

48 See Global Labor Strategies: *Behind the Great Wall of China*, available at http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf (last visited April 30, 2017).

49 See Halegua, *supra* note 43.

50 See Dana C. Nicholas: "China's Labor Enforcement Crisis: International Intervention and Corporate Social Responsibility", *The Scholar*, Vol. 11:155, pp156-194.

51 See China Labour Bulletin, *Who is to blame? An Analysis of Charity and Compensation for China's Pneumoconiosis Victims*, http://www.clb.org.hk/sites/default/files/archive/schi/File/other/No%2022%20silicosis%3%285%292012Nov_0.pdf, (last visited April. 30, 2017).

litigations and negotiations. LAC provided them with legal training, legal aid lawyers, and living subsidies for several years. LAC also organized campaigns in Hong Kong to support the victims, to criticize the involved companies, and to push the companies to negotiate with the victims.⁵² When some companies refused to pay the compensation to the victims, LAC organized three representatives of the victims to lobby and protest in Basel, Switzerland. They succeeded in making the involved companies be expelled by the Basel World, which was a top jewelry fair in the world. These campaigns and litigations helped China to notice the problems of labor law regarding the occupational disease, and to improve the laws and regulations. In 2001, China enacted the Law on Prevention and Control of Occupational Disease, and revised it in 2011. Currently, LAC is still working on pushing China's labor law reform through advocacy and public education. For instance, LAC submitted recommendations regarding special relief fund for occupational disease, and unification of the standards of civil compensation for occupational disease, to the General Office of the Standing Committee of NPC in 2013. It also submitted reports to the UN Human Rights Council during China's Universal Periodic Review session to attract international attention to China's labor conditions.

The Demonstration Effects of Informal Rules

One important phenomenon of legal globalization is the rise of informal international norms developed by non-state actors. Some international Corporate Social Responsibility (CSR) standards, especially the Global Compact, SA8000, and ISO26000 have impacts on China's labor law reform. Global Compact is a voluntary network launched by UN in 2000. Currently, it has over 12000 corporate participants and other stakeholders from over 145 countries. The Global Compact builds ten principles based on the international documents such as the Universal Declaration of Human Rights, and the ILO Declaration on Fundamental Principles and Rights at Work, etc. Among the ten principles, there are general human rights principles like "support and respect the protection of internationally proclaimed human rights," and principles on specific labor issues, such as the elimination of forced and compulsory labor, the abolition of child labor, and the elimination of discrimination.⁵³ Global Compact has established a secretariat in China, and has more than 300 Chinese corporate participants. ISO26000 is an international standard developed by the International Organization for Standardization (ISO) in 2010 to provide

52 China Labour Bulletin, *Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers and the Defects of China's Occupational Illnesses Prevention and Compensation System*, http://www.clb.org.hk/sites/default/files/archive/en/File/research_reports/Deadly_Dust_Dec2005.pdf, (last visited April. 30, 2017).

53 FIDH: *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*, 2010, pp499-500.

guidelines for CSR. It was the first global CSR standards that involve governments.⁵⁴ It addresses a wide range of issues, including human rights, and labor practices. SA8000 is an international standard developed by Social Accountability International (SAI) in 1997. It is the world's first auditable social certification standards for labor rights. It is developed based on the UN Declaration of Human Rights, conventions of the ILO, UN and national law, which makes it a leading CSR standards in the labor area.⁵⁵ Among these three standards, SA8000 is the specific labor standard and has wide application in China⁵⁶ so that we will examine the relations between SA8000 and China's labor law.

SA8000 addresses nine key issues, including child labor, forced or compulsory labor, health and safety, freedom of association and right to collective bargaining, discrimination, disciplinary practices, working hours, remuneration, and management systems. China's current labor law generally sets the same standards as SA8000 on the issues of child labor, health and safety, and working hours. On some issues, China's labor law even offers better protections to the workers than SA8000 does. For instance, SA8000 sets the minimum working age as 15 years old according to the ILO standards, but China's Labor Law sets the minimum working age as 16 years old. However, there are still many things China's labor law can learn from SA8000:

(1) The terms of SA8000 are more specific and practical. It provides creative and useful solutions to many practical problems in labor rights protection. For example, SA8000 requires that employers shall not "use labor-only contracting arrangements, consecutive short-term contracts and/or false apprenticeship or other schemes to avoid meeting its obligations to personnel under applicable laws and regulations,"⁵⁷ which greatly addresses a common problem among Chinese companies.

(2) Many terms of SA8000 address some issues which are not addressed by China's labor law. For example, China does not enact an law or useful regulation to prevent sexual abuses in workplace, while SA8000 requires that "the organisation shall not allow any behavior that is threatening, abusive, exploitative or sexually coercive, including gestures, language

54 Li Weiyang, Xiao Hongjun: *ISO26000 de Luoji: Shehui Zeren Guoji Biaozhun Shendu Jiedu*, Jingji Guanli Chubanshe, 2011, pp. 6.

55 See Li Xueping: *Qiyehui Zeren Guoji Falv Wenti Yanjiu*, Zhongguo Renmin Daxue Chubanshe, 2011, pp 83.

56 Lin, Li-Wen, Corporate Social Accountability standards in the global supply chain: Resistance, reconsideration and resolution in China, *Cardozo Journal of International and Comparative Law*, 2006, Vol. 15, No.2: pp.321-370.

57 SA8000 (2014), pp. 12. Available at http://sa-intl.org/_data/n_0001/resources/live/SA8000%20Standard%202014.pdf (last visited April 30, 2017).

and physical contact, in the workplace and in all residences and property provided by the organisation, whether it owns, leases or contracts the residences or property from a service provider,”⁵⁸ which fills in the legal gap.

(3) Many terms of SA8000 set higher standards, from which China’s labor law can learn to improve itself. For instance, China’s Labor Law only forbids discrimination based ethnic community, race, sex, and religious belief, and it only protect the equal rights of employment, work allocation, and remuneration, while SA8000 requires that “the organisation shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination or retirement based on race, national or territorial or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age or any other condition that could give rise to discrimination,”⁵⁹ which can definitely provide more comprehensive protections to wider range of people.

These informal norms can influence not only China’s labor law, but also the policies of the Chinese government and business associations. For example, because the launch of SA8000 greatly affected China’s foreign trade,⁶⁰ and many Chinese overseas investments faced challenges for its poor performance on CSR,⁶¹ the Chinese government issued a series of policies to promote CSR in China. The State-owned Assets Supervision and Administration Commission released the Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities in 2008, the China Banking Association released the Guidelines on Corporate Social Responsibility of Chinese Banking Financial Institutions in 2009, the Ministry of Finance released the Compliance Guidelines for Enterprise Internal Controls No. 4: Corporate Social Responsibility in 2010, the State Administration of Industry and Commerce released the Guidelines for Direct-selling Enterprises on Fulfilling Corporate Social Responsibility in 2013, and the Guidelines for Online Trade Platform Operators on Fulfilling Corporate Social Responsibility in 2014. All of these guidelines state that the compliance of laws and regulations, and the protections of labor rights and interests is an important part of CSR. Besides, the China National Textile and Apparel Council developed a CSR management

58 Id, pp. 11.

59 Id, pp. 10.

60 See Hu Ming-juan, SA8000 de Yinru yu Woguo Qiye Shehui Zeren Biaozhun de Jianli, *Qiye Gaige yu Fazhan*, 2005, No. 6:pp171-175.

61 See Zhang Wan-hong, Cheng Qian, Human Rights Impacts of Overseas Investments by Chinese Corporates under the “Going Out” Strategy, in China Society of Human Rights Studies ed., *Annual Report on China’s Human Rights No. 5 (2015)*, Social Science Academic Press, 2015, pp305-321.

standard, namely CSC9000T, for Chinese textile and apparel industry. The CSC9000T is based on Chinese law and regulations, and conventions ratified by China, including ILO conventions.

Conclusions

Legal globalization is not a dream or a slogan, but a reality and a trend. China's labor law reform since the "reform and opening up" reflects the impacts of legal globalization on Chinese legal system. First, international norms provided resources to Chinese legislators to establish its labor legal system for a market economy. China introduced and transplanted many international or foreign legal institutions and norms into Chinese legal system. Even some norms of conventions were not transplanted, the principles or conceptions of the conventions were accepted by Chinese laws, which would guide and shape Chinese legal reform in the next step. This impact was not direct, but profound and lasting.

Second, non-state actors played important roles in global governance. Multi-national corporations and transnational civil society organizations influenced Chinese legal reform through lobbying, advocacy, public education, litigation, etc. Their opinions might not be accepted by Chinese legislators, but would help them think about and launch the legal reform.

Third, informal international norms shall not be underestimated. The informal norms or standards developed by business associations or NGOs not only protected labor rights and changed corporate behaviors, but also filled in some gaps of China's labor law. They could also inspire Chinese legislators to reform and improve China's labor laws and regulations. Moreover, they inspired and encouraged Chinese NGOs and business association to develop domestic standards for Chinese companies, which itself was a phenomenon of legal globalization.

